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IN THE

Supreme Court of the United States

OCTOBER TERM, 1938.

No. 330.

EUGENE KESSLER, District Director of Immigration
and Naturalization,

Petitioner,

v.

JOSEPH GEORGE STRECKER.

**BRIEF ON BEHALF OF THE COMMUNIST PARTY OF
THE UNITED STATES, AMICUS CURIAE.**

✓
JOSEPH R. BRODSKY,

On behalf of the Communist Party

of the United States,

Amicus Curiae.



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IN THE
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OCTOBER TERM, 1938.

No. 330.

EUGENE KESSLER, District Director of
Immigration and Naturalization,

Petitioner,

against

JOSEPH GEORGE STRECKER.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE FIFTH CIRCUIT.

**BRIEF ON BEHALF OF THE COMMUNIST PARTY OF
THE UNITED STATES, AMICUS CURIAE.**

Statement.

The Government seeks to sustain the deportation of the respondent upon the following grounds:

1. That there was evidence in the record before the Secretary of Labor to support the finding in the warrant of deportation that respondent, after entry, became a member

of an organization that believes in, advises, advocates and teaches the overthrow by force and violence of the Government of the United States (Government's brief, page 15, Argument I).

2. That there was evidence in the record before the Secretary of Labor to support the finding in the deportation warrant that respondent believes in and teaches the overthrow by force and violence of the Government of the United States (Government's brief, p. 50, Argument II).

The organization referred to in Argument I (*supra*) is the Communist Party of the United States, and the Government contends that said party "is a revolutionary party which seeks the overthrow through violent, revolutionary action, when the occasion seems propitious, of the Governments of so-called capitalistic-imperialistic countries, of which America is regarded as one" (Government's brief, p. 41).

Likewise with reference to Argument II (*supra*), the Government places great stress on the membership of the respondent in the Communist Party of the United States as indicative of his personal beliefs (Government's brief, pp. 52-53).

Although the question of the personal beliefs of respondent was not raised in the petition for certiorari, the Government nevertheless urges that the Court consider the point on this appeal.

Assuming *arguendo* that this point is before the Court, then again the tenets of the Communist Party of the United States become important in determining the personal beliefs of the respondent, since the gravamen of the charge is in reality membership in that party.

The Communist Party of the United States, appearing *amicus curiae*, therefore deems it pertinent and important to submit for the information of this Court the following documents:

1) Constitution and By-laws of the Communist Party of the United States;

2) "What Is Communism?" by Earl Browder, Chapter XIV—"Force and Violence" (pp. 124-130);

3) "The People's Front", by Earl Browder, Part II, Chap. III—"On Church, Home and Violence" (pp. 197-203);

4) Statement of Earl Browder, General Secretary of Communist Party, U.S.A., to the McNaboe Committee, June 29, 1938.

Should the Government urge that said exhibits are not entitled to consideration, since they are not contained in the record of this case, Counsel wishes to point out that the Government has likewise presented in its brief, as proof of its contention that the Communist Party of the United States advocates the overthrow of government by force and violence, matter not contained in the record. If this matter is regarded as properly before the Court, it is submitted that the documents appended to this brief should likewise be considered.

Consideration of the exhibits herein contained, which consist of (a) the Constitution and By-laws of the Communist Party of the United States, which is its authoritative statement of object and purpose of existence, and (b) of pronouncements of its highest ranking officer, to wit, its general secretary, made in his official capacity, prove conclusively that the Communist Party of the United States does not either believe in, advise, teach or advocate the overthrow by force or violence of the Government of the United States.

CONCLUSION.

The judgment of the Court below that the evidence was insufficient should be sustained.

Respectfully submitted,

JOSEPH R. BRODSKY,
On behalf of the Communist Party
of the United States,
Amicus Curiae.

EXHIBITS**Constitution and By-laws of the Communist Party.****THE CONSTITUTION AND BY-LAWS**

of the

COMMUNIST PARTY

of the

UNITED STATES OF AMERICA

This Constitution was unanimously adopted by the Tenth National Convention of the Communist Party of the U.S.A., in New York, May 27 to 31, 1938, after two months of pre-convention discussion in every Branch of the Party. In its final form it was subsequently ratified by the Party membership after discussion in the Branches of the Party.

CONSTITUTION**PREAMBLE**

THE COMMUNIST PARTY of the United States of America is a working class political party carrying forward today the traditions of Jefferson, Paine, Jackson, and Lincoln, and of the Declaration of Independence; it upholds the achievements of democracy, the right of "life, liberty, and the pursuit of happiness," and defends the United States Constitution against its reactionary enemies who would destroy democracy and all popular liberties; it is devoted to defense of the immediate interests of workers, farmers, and all toilers against capitalist exploitation, and to preparation of the working class for its historic mission to unite and lead the American people to extend these demo-

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cratic principles to their necessary and logical conclusions:

By establishing common ownership of the national economy, through a government of the people, by the people, and for the people; the abolition of all exploitation of man by man, nation by nation, and race by race, and thereby the abolition of class divisions in society; that is, by the establishment of socialism, according to the scientific principles enunciated by the greatest teachers of mankind, Marx, Engels, Lenin, and Stalin, embodied in the Communist International; and the free cooperation of the American people with those of other lands, striving toward a world without oppression and war, a world brotherhood of man.

To this end, the Communist Party of the United States of America establishes the basic laws of its organization in the following Constitution.

ARTICLE I

Name

The name of this organization shall be the COMMUNIST PARTY OF THE UNITED STATES OF AMERICA.

ARTICLE II

Emblem

The emblem of the party shall be the crossed hammer and sickle, representing the unity of worker and farmer, with a circular inscription having at the top "Communist Party of the U.S.A." and in the lower part "Affiliated to the Communist International."

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ARTICLE III

Membership

Section 1. Any person, eighteen years of age or more, regardless of race, sex, color, religious belief, or nationality, who is a citizen or who declares his intention of becoming a citizen of the United States, and whose loyalty to the working class is unquestioned, shall be eligible for membership.

Section 2. A Party member is one who accepts the Party program, attends the regular meetings of the membership Branch of his place of work or of his territory or trade, who pays dues regularly and is active in Party work.

Section 3. An applicant for membership shall sign an application card which shall be endorsed by at least two members of the Communist Party. Applications are subject to discussion and decision by the basic organization of the Party (shop, industrial, neighborhood Branch) to which the application is presented. After the applicant is accepted by a majority vote of the membership of the Branch present at a regular meeting he shall publicly pledge as follows:

"I pledge firm loyalty to the best interests of the working class and full devotion to all progressive movements of the people. I pledge to work actively for the preservation and extension of democracy and peace, for the defeat of fascism and all forms of national oppression, for equal rights to the Negro people and for the establishment of socialism. For this purpose, I solemnly pledge to remain true to the prin-

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ciples of the Communist Party to maintain its unity of purpose and action, and to work to the best of my ability to fulfil its program."

Section 4. There shall be no members-at-large without special permission of the National or State Committee.

Section 5. Party members two months in arrears in payment of dues cease to be members of the Party in good standing, and must be informed thereof.

Section 6. Members who are four months in arrears shall be stricken from the Party rolls. Every member three months in arrears shall be officially informed of this provision, and a personal effort shall be made to bring such member into good standing. However, if a member who for these reasons has been stricken from the rolls applies for readmission within six months, he may, on the approval of the next higher Party committee, be permitted to pay up his back dues and keep his standing as an old member.

ARTICLE IV

Initiation and Dues

Section 1. The initiation fee for an employed person shall be 50 cents and for an unemployed person 10 cents.

Section 2. Dues shall be paid every month according to rates fixed by the National Party Convention.

Section 3. The income from dues shall be distributed to the various Party organizations as follows:

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- a. 25 per cent to the Branch.
- b. 35 per cent to the National Office.
- c. The remaining 40 per cent shall be distributed among the respective State, County, City and Section Organizations in accordance with decisions of the State Conventions.

Section 4. Fifty per cent of the initiation fee shall be sent to the National Committee and 50 per cent shall remain with the State Organization.

ARTICLE V

International Solidarity and Assessment

Section 1. Every four months, all members of the Party shall pay an assessment equal to the average dues payment per month for the previous four months, for an International Solidarity Fund. This money shall be used by the National Committee exclusively to aid our brother Communist Parties in other countries suffering from fascist and military reaction.

Section 2. All local or district assessments are prohibited, except by special permission of the National Committee. Special assessments may be levied by the National Convention or the National Committee. No member shall be considered in good standing unless he purchases stamps for such special assessments.

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ARTICLE VI

Rights and Duties of Members

Section 1. The Communist Party of the U.S.A. upholds the democratic achievements of the American people. It opposes with all its power any clique, group, circle, faction or party which conspires or acts to subvert, undermine, weaken or overthrow any or all institutions of American democracy whereby the majority of the American people have obtained power to determine their own destiny in any degree. The Communist Party of the U.S.A., standing unqualifiedly for the right of the majority to direct the destinies of our country, will fight with all its strength against any and every effort, whether it comes from abroad or from within, to impose upon our people the arbitrary will of any selfish minority group or party or clique or conspiracy.

Section 2. Every member of the Party who is in good standing has not only the right, but the duty, to participate in the making of the policies of the Party and in the election of its leading committees, in a manner provided for in the Constitution.

Section 3. In matters of state or local nature, the Party organizations have the right to exercise full initiative and to make decisions within the limits of the general policies and decisions of the Party.

Section 4. After thorough discussion, the majority vote decides the policy of the Party, and the minority is duty-bound to carry out the decision.

Section 5. Party members disagreeing with any decision of a Party organization or committee have the right to

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appeal that decision to the next higher body, and may carry the appeal to the highest bodies of the Communist Party of the U.S.A., its National Committee and the National Convention. Decisions of the National Convention are final. While the appeal is pending, the decision must nevertheless be carried out by every member of the Party.

Section 6. In pre-Convention periods, individual Party members and delegates to the Convention shall have unrestricted right of discussion on any question of Party policy and tactics and the work and future composition of the leading committees.

Section 7. The decisions of the Convention shall be final and every Party member and Party organization shall be duty-bound to recognize the authority of the Convention decisions and the leadership elected by it.

Section 8. All Party members in mass organizations (trade unions, farm and fraternal organizations, etc.), shall cooperate to promote and strengthen the given organization and shall abide by the democratic decisions of these organizations.

Section 9. It shall be the duty of Party members to explain the mass policies of the Party and the principles of socialism.

Section 10. All Party members who are eligible shall be required to belong to their respective trade unions.

Section 11. All officers and leading committees of the Party from the Branch Executive Committee up to the

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highest committees are elected either directly by the membership or through their elected delegates. Every committee must report regularly on its activities to its Party organization.

Section 12. Any Party officer may be removed at any time from his position by a majority vote of the body which elected him, or by the body to which he is responsible, with the approval of the National Committee.

Section 13. Requests for release of a Party member from responsible posts may be granted only by the Party organization which elected him, or to which he is responsible, in consultation with the next higher committee.

Section 14. No Party member shall have personal or political relationship with confirmed Trotskyites, Lovestoneites, or other known enemies of the Party and of the working class.

Section 15. All Party members eligible shall register and vote in the elections for all public offices.

ARTICLE VII

Structure of the Party

Section 1. The basic organizations of the Communist Party of the U.S.A. are the shop, industrial and territorial Branches.

The Executive Committee of the Branch shall be elected once a year by the membership.

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Section 2. The Section Organization shall comprise all Branches in a given territory of the city or state. The Section territory shall be defined by the higher Party committee and shall cover one or more complete political divisions of the city or state.

The highest body of the Section Organization is the Section Convention, or special annual Council meeting, called for the election of officers, which shall convene every year. The Section Convention or special Council meeting discusses and decides on policy and elects delegates to the higher Convention.

Between Section Conventions, the highest Party body in the Section Organization is the Section Council, composed of delegates elected proportionately from each Branch for a period of one year. Where no Section Council exists, the highest Party body is the Section Committee, elected by a majority vote of the Section Convention, which also elects the Section Organizer.

The Section Council or Section Committee may elect a Section Executive Committee which is responsible to the body that elected it. Non-members of the Section Council may be elected to the Executive Committee only with the approval of the next higher committee.

Section 3. In localities where there is more than one Section Organization, a City or County Council or Committee may be formed in accordance with the By-Laws.

Section 4. The State Organization shall comprise all Party organizations in one state.

The highest body of the State Organization is the State Convention, which shall convene every two years, and shall be composed of delegates elected by the Conventions of the

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subdivisions of the Party or Branches in the state. The delegates are elected on the basis of numerical strength.

A State Committee of regular and alternate members shall be elected at the State Convention with full power to carry out the decisions of the Convention and conduct the activities of the State Organization until the next State Convention.

The State Committee may elect from among its members an Executive Committee, which shall be responsible to the State Committee.

Special State Conventions may be called either by a majority vote of the State Committee, or upon written request of the Branches representing one-third of the membership of the state, with the approval of the National Committee.

Section 5. District Organizations may be established by the National Committee, covering two or more states. In such cases the State Committees shall be under the jurisdiction of the District Committees, elected by and representing the Party organizations of the states composing these Districts. The rules of convening District Conventions and the election of leading committees shall be the same as those provided for the State Organization.

ARTICLE VIII

National Organization

Section 1. The supreme authority in the Communist Party of the U.S.A. is the National Convention. Regular National Conventions shall be held every two years. Only such a National Convention is authorized to make political

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and organizational decisions binding upon the entire Party and its membership, except as provided in Article VIII, Section 6.

Section 2. The National Convention shall be composed of delegates elected by the State and District Conventions. The delegates are elected on the basis of numerical strength of the State Organizations. The basis for representation shall be determined by the National Committee.

Section 3. For two months prior to the Convention, discussions shall take place in all Party organizations on the main resolutions and problems coming before the Convention. During this discussion all Party organizations have the right and duty to adopt resolutions and amendments to the Draft Resolutions of the National Committee for consideration at the Convention.

Section 4. The National Convention elects the National Committee, a National Chairman and General Secretary by majority vote. The National Committee shall be composed of regular and alternate members. The alternate members shall have voice but no vote.

Section 5. The size of the National Committee shall be decided upon by each National Convention of the Party. Members of the National Committee must have been active members of the Party for at least three years.

Section 6. The National Committee is the highest authority of the Party between National Conventions, and is responsible for enforcing the Constitution and securing the execution of the general policies adopted by the democratically elected delegates in the National Convention as-

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sembled. The National Committee represents the Party as a whole, and has the right to make decisions with full authority on any problem facing the Party between Conventions. The National Committee organizes and supervises its various departments and committees; conducts all the political and organizational work of the Party; appoints or removes the editors of its press, who work under its leadership and control; organizes and guides all undertakings of importance for the entire Party; distributes the Party forces and controls the central treasury. The National Committee, by majority vote of its members, may call special State or National Conventions. The National Committee shall submit a certified, audited financial report to each National Convention.

Section 7. The National Committee elects from among its members a Political Committee and such additional secretaries and such departments and committees as may be considered necessary for most efficient work. The Political Committee is charged with the responsibility of carrying out the decisions and the work of the National Committee between its full sessions. It is responsible for all its decisions to the National Committee. The size of the Political Committee shall be decided upon by majority vote of the National Committee.

Members of the Political Committee and editors of the central Party organs must have been active members of the Party for not less than five years.

The National Committee shall meet at least once in four months.

The Political Committee of the National Committee shall meet weekly.

The National Committee may, when it deems it necessary, call Party Conferences. The National Committee shall de-

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side the basis of attendance at such Conferences. Such Conferences shall be consultative bodies auxiliary to the National Committee.

ARTICLE IX

National Control Commission

Section 1. For the purpose of maintaining and strengthening Party unity and discipline, and of supervising the audits of the financial books and records of the National Committee of the Party and its enterprises, the National Committee elects a National Control Commission, consisting of the most exemplary Party members, each of whom shall have been an active Party member for a least five years. The size of the National Control Commission shall be determined by the National Committee.

Section 2. On various disciplinary cases, such as those concerning violations of Party unity, discipline or ethics, or concerning lack of class vigilance and Communist firmness in facing the class enemy, or concerning spies, swindlers, double-dealers and other agents of the class enemy—the National Control Commission shall be charged with making investigations and decisions, either on appeals against the decisions of lower Party bodies, or on cases which are referred to it by the National Committee, or on cases which the National Control Commission itself deems necessary to take up directly.

Section 3. The decisions of the National Control Commission shall go into effect as soon as their acceptance by the National Committee or its Political Committee is assured.

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Section 4. Members of the National Control Commission shall have the right to participate in the sessions of the National Committee with voice but no vote.

Section 5. Meetings of the National Control Commission shall take place at least once every month.

ARTICLE X

Disciplinary Procedure

Section 1. Breaches of Party discipline by individual members, financial irregularities, as well as any conduct or action detrimental to the Party's prestige and influence among the working masses and harmful to the best interests of the Party, may be punished by censure, public censure, removal from responsible posts, and by expulsion from the Party. Breaches of discipline by Party Committees may be punished by removal of the Committee by the next higher Party Committee, which shall then conduct new elections.

Section 2. Charges against individual members may be made by any person—Party or non-Party—in writing, to the Branches of the Party or to any leading committee. The Party Branch shall have the right to decide on any disciplinary measure, including expulsion. Such action is subject to final approval by the State Committee.

Section 3. The Section, State, and National Committees and the National Control Commission have the right to hear and take disciplinary action against any individual member or organization under their jurisdiction.

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Section 4. All parties concerned shall have the fullest right to appear, to bring witnesses and to testify before the Party organization. The member punished shall have the right to appeal any disciplinary decision to the higher committees up to the National Convention of the Party.

Section 5. Party members found to be strikebreakers, degenerates, habitual drunkards, betrayers of Party confidence, provocateurs, advocates of terrorism and violence as a method of Party procedure or members whose actions are detrimental to the Party and the working class, shall be summarily dismissed from the positions of responsibility, expelled from the Party and exposed before the general public.

ARTICLE XI

Affiliation

The Communist Party of the U.S.A. is affiliated with its fraternal Communist Parties of other lands through the Communist International and participates in International Congresses, through its National Committee. Resolutions and decisions of International Congresses shall be considered and acted upon by the supreme authority of the Communist Party of the U.S.A., the National Convention, or between Conventions, by the National Committee.

ARTICLE XII

Amending the Constitution

Section 1. This Constitution and By-Laws may be amended as follows: (a) by decision of a majority of the

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voting delegates present at the National Convention, provided the proposed amendment has been published in the Party press or Discussion Bulletins of the National Committee at least thirty days prior to the Convention; (b) by the National Committee for the purpose of complying with any law of any state or of the United States or whenever any provisions of this Constitution and By-Laws conflict with any such law. Such amendments made by the National Committee shall be published in the Party press or Discussion Bulletins of the National Committee and shall remain in full force and effect until acted upon by the National Convention.

Section 2. Any amendment submitted by a State Committee or State Convention within the time provided for shall be printed in the Party press..

ARTICLE XIII

Section 1. By-Laws shall be adopted, based on this Constitution, for the purpose of establishing uniform rules and procedure for the proper functioning of the Party organizations. By-Laws may be adopted or changed by majority vote of the National Convention, or between Conventions by majority vote of the National Committee.

Section 2. State By-Laws not in conflict with the National Constitution and By-Laws may be adopted or changed by majority vote of the State Convention or, between Conventions, by majority vote of the State Committee.

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ARTICLE XIV

Charters

The National Committee shall issue Charters to State or District Organizations and at the request of the respective State Organizations, to County and City Organizations, defining the territory over which they have jurisdiction and authority.

RULES AND BY-LAWS

THE FOLLOWING are the Rules and By-Laws adopted by the Communist Party of the United States of America, in accordance with its Constitution, for the purpose of carrying out the principles, rights and duties as established in the Constitution in a uniform manner in all Party organizations.

Basic Organizations

The basic organizations of the Communist Party of the U.S.A. are the shop, territorial and industrial Branches. A shop Branch consists of those Party members who are employed in the same place of employment. Shop Branches shall be organized in every factory, shop, mine, ship, dock, office, etc., where there is a sufficient number of Party members, but no less than seven.

A territorial Branch consists of members of the Party living in the same neighborhood or territory. Territorial Branches shall be organized on the basis of the political division of the city or town (assembly district, ward, precinct, election district, town or township, etc.).

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Industrial Branches may be organized and shall consist of Party members employed in the same trade or industry and shall be composed of those Party members who are employed in places where shop Branches have not yet been formed. Shop Branches shall be organized wherever possible.

Every Branch of the Party shall elect an Executive Committee, which shall consist of at least the following officers: chairman, treasurer, educational director, membership director. There may be a recording secretary whose functions may be filled by one of the other officers. The size of the Executive Committee shall be determined by the size of the Branch, but shall not be less than four.

The Executive Committee has the duty of preparing the agenda and proposals for the membership meeting, administering and executing the decisions of the membership and the higher Party committee, and, between Branch meetings, of making decisions concerning matters which require immediate action. The Executive Committee of the Branch shall report regularly on its work, which shall be subject to review and action by the membership.

Regular election of Branch officers shall take place yearly, but not more than twice a year. All officers shall be elected by majority vote of the membership at a specially designated meeting of which the whole membership shall be notified. Officers may be replaced by majority vote of the Branch membership at any time, with the approval of the higher Party committee.

Financial statements shall be submitted to the Branch by the Executive Committee at least quarterly.

The order of business at the Branch meeting shall include the following:

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1. Reading of minutes of previous meeting;
2. Dues payments and initiation of new members;
3. Report of Executive Committee:
 - a. Check-up on decisions (old business);
 - b. Assignments and tasks, reports on communications, literature and press (new business);
4. Good and welfare;
5. Regular educational discussion (educational discussion may be moved to any point on the order of business).

Collections within Party organizations in a given territory may be made only with the approval of the next higher body.

One-third of the Branch membership shall constitute a quorum.

Branches shall meet at least once every two weeks.

Section Organizations

Delegates to the Section Convention or Council shall be elected by all Branches in proportion to their membership. The basis of representation shall be decided upon by the Section Committee in consultation with the higher Party Committee.

Any delegate to the Section Council may be recalled by a majority vote of his Branch. The Section Council meets regularly once a month.

The Section Council shall make a report at least once in three months to the general membership meeting of the

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Section. All Party members residing in the territory may be invited to these meetings.

The Section Council shall submit financial reports to the Branches and to the higher Party Committee at least once in three months.

City or County Organizations

In cities where there is more than one Section Organization, a City Council may be formed by the election of delegates either from the Section Councils or directly from the Branches. The role of this form of organization is to coordinate and guide the work on a citywide scale, and actively participate in or supervise Party activity in all public elections and civic affairs within its territory.

The City Council elects from among its members a City Executive Committee with the same rights and duties on a citywide scale as the Section Executive Committee has on a Sectionwide scale.

The State Committee may form County Councils with the same rights and duties on a county scale as the City Council has on a city scale.

The structure of the County Council shall be the same as of the City Council.

State or District Organizations

For two months prior to the State Convention, discussion shall take place in all Party organizations on the main resolutions and problems coming before the Convention. During this discussion, all Party organizations have the right and duty to adopt resolutions and amendments to the Draft Resolutions of the State Committee, for consideration at the Convention.

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Only members who are at least two years in the Party shall be eligible for elections to the State Committee. Exceptions may be made only by State or National Conventions. The size of the State Committee shall be decided upon by the Convention, in consultation with the National Committee.

The State Committee shall meet at least once every two months. It shall elect from among its members an Executive Committee to function with full power, which shall be responsible to the State Committee.

The State Committee, by a majority vote of its members, may replace any regular member who is unable to serve because of sickness or other assignment, or who is removed from office. New regular members shall be chosen from among the alternate members of the State Committee.

An auditing committee, elected by the State Committee, shall examine the books of the State Financial Secretary once every month. A Certified Public-Accountant shall audit these books at least once a year, and his report shall be presented to the State Committee and Conventions.

Special State Conventions may be called by a majority vote of the State Committee, or by the National Committee.

Upon the written request of Branches representing one-third of the membership of the State Organization, the State Committee shall call a special State Convention.

The call for a special Convention shall be subject to the approval of the National Committee.

The State Committee shall have the power to establish an official organ with the approval of the National Committee.

The State Committee shall conduct or supervise Party activity in all public elections and statewide public affairs within the state.

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In states having more than one thousand members, the State Committee shall appoint a Disciplinary Committee with the task of hearing disciplinary cases, and reporting its findings and recommendations to the State Committee. In states with less than one thousand members, a Committee may be appointed if it is considered necessary.

The rules governing the organization and functioning of District Organization shall be the same as those provided for the State Organizations.

Qualifications for Delegates to Conventions

Delegates to the State Conventions must be in good standing and have been members of the Party for at least one year.

Delegates to the National Convention must be in good standing and have been members of the Party for at least two years.

In special cases, the latter qualification (length of time in Party) may be waived, but only with the approval of the leading committee involved (National Committee for the National Convention, State Committee for the State Convention).

Membership

It is within the provision of Article III, Section 1 of the Constitution that the following are eligible to membership in the Communist Party:

- a. Persons who, by some present unjust and undemocratic laws, are excluded from citizenship and barred from legally declaring their intentions of becoming citizens;

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- b. Students and others temporarily residing in the country;
- c. All persons coming from countries contiguous to the United States, engaged in migratory work, and temporarily in the country.

Rate of Dues

Dues shall be paid every month according to the following rates:

- a. Housewives, unemployed, and all members earning up to \$47.00 a month, shall pay 10 cents a month.
- b. All members earning from \$47.01 to \$80.00 a month inclusive shall pay 25 cents a month.
- c. All members earning from \$80.01 to \$112.00 a month inclusive shall pay 50 cents a month.
- d. All members earning from \$112.01 to \$150.00 a month inclusive shall pay \$1.00 a month.
- e. Members earning more than \$160.00 per month shall pay, besides the regular \$1.00 dues, additional dues at the rate of 50 cents for each additional \$10.00 or fraction thereof.

All dues payments must be acknowledged in the membership book by dues stamps, issued by the National Committee.

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of the United States.*

Transfers and Leaves of Absence

Members who move from one neighborhood, shop or industry to another and have to go from one Branch to another, shall obtain transfers from their Branches. No member shall be accepted by the new Branch without a properly filled out transfer card. Before receiving transfers, members shall be in good standing and have paid up all other financial obligations to their Branches. If a member transfers from one Section or City Organization to another, a duplicate transfer card shall be transmitted through the State or District Committee. If a member transfers from one State or District to another, this shall be recorded in the membership book, and a duplicate transfer card shall be sent through the National Committee.

No member has the right to take a leave of absence without the permission of his Branch. Leaves of absence not exceeding one month may be granted by the Branch. An extended leave of absence, upon the recommendation of the Branch, shall be acted upon by the next higher committee of the Party. Before a leave of absence is given the member shall pay up dues, and settle his financial obligations up to and including the end of the leave of absence period.

Readmittance

Expelled members applying for readmittance must submit a written statement and their applications may not be finally acted upon except with the approval of the National Control Commission.

Former members whose membership has lapsed must submit a written statement on application for readmission, to be finally acted upon by the respective State Committees.

"What is Communism", by Earl Browder, Chap. XIV
(pp. 124-130).

FORCE AND VIOLENCE*

It is obvious to everyone that the capitalist system is breaking down, that millions of people are condemned to a life of slow starvation because the capitalists can profitably operate only a small part of the existing means of production. But it would be a fatal mistake to conclude that the capitalist social order will simply collapse of its own weight, or that the capitalists will peacefully surrender their present power and then all of us will join together in the building of a new social system. No ruling class group has ever behaved in such peaceful fashion. As the crisis becomes worse, the more desperately will the capitalists cling to their property and their power, the more murderous will become their attacks on the masses of the people. It must be emphasized that capitalism will not simply come to an end; it can only be ended by the organ-

*At the Ninth Convention of the Communist Party, held June 24-28, 1936, the following resolution was adopted:

"The Communist Party must use the opportunity of this election campaign to smash once and for all the superstition, which has been embodied in a maze of court decisions having the force of law, that our Party is an advocate of force and violence, that it is subject to laws (Federal immigration laws, state 'criminal syndicalism' laws) directed against such advocacy. The Communist Party is not a conspirative organization, it is an open revolutionary party, continuing the traditions of 1776 and 1861; it is the only organization that is really entitled by its program and work to designate itself as 'sons and daughters of the American revolution'. Communists are not anarchists, not terrorists. The Communist Party is a legal party and defends its legality. Prohibition of advocacy of force and violence does not apply to the Communist Party; it is properly applied only to the Black Legion, the Ku Klux Klan, and other fascist groupings, and to the strike-breaking agencies and the open-shop employers who use them against the working class, who are responsible for the terrible toll of violence which shames our country."

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ized actions of the working class in collaboration with its allies from other sections of the population.

The revolution does not simply *happen*; it must be *made*. This does not imply that the Communist Party "makes" the revolution. The socialist revolution is carried out by the great masses of toilers. The Communist Party, as the vanguard of the most conscious toilers, acts as their organizer and guide. It gives the masses political awareness of their problems, a realistic program that will solve these problems; the heightened class consciousness of the workers leads them to follow the Communist Party.

The transfer of state power from the capitalists to the working class, which begins the social revolution, can be accomplished only under certain conditions which have an objective existence independent of the desires of the struggling classes. There must be what we Communists call "a revolutionary situation". Such a situation develops when the ruling class can no longer dominate society in the old way; when the economic system breaks down and can no longer feed the masses; when the middle classes are wavering and a considerable part have turned against the rulers; when the capitalists themselves have lost confidence in their ability to solve their own problems; and when capitalist control of the armed forces of the state has been undermined and shaken.

Under such circumstances the revolutionary will-to-power of the workers, their heroism, their self-sacrifice, their enthusiasm to struggle for a new order, strike telling blows against a ruling class which is already shaken and conscious of its own doom. In this revolutionary situation, the Communist Party, which has won the active support of the majority of the working class and of the decisive sections of the other exploited classes, wins some of the armed forces to its side, and leads the effective majority of the population to the seizure of state power. There can

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be no such first step if there is no revolutionary situation, or if the Communist Party has failed to rally the support of the majority of the population. After this first step of taking state power has been realized, the workers make use of the state power to take possession of the instruments of production. Then the new government, at the head of the masses, reorganizes the entire national economy of the country in an organized and planned manner, along socialist lines.

So long as the capitalists retain complete control of the armed forces and their deadly weapons, they can defeat the revolt of the masses. In a revolutionary situation, however, the capitalists lose their former complete control of the armed forces. Capitalists do not fight their own battles; we have seen that they are but a tiny fraction of the population. To maintain their rule they need the support of sections of the population whom they bribe or dope with demagogy. Above all, they need the armed forces. But soldiers and sailors come from the ranks of the workers. They can be, and must be, won for the revolution. *All revolutions have been made with weapons which the overthrown rulers had relied on for their protection.*

We must dispose of the false notion that Communists believe that a revolutionary situation can only arise out of a second world war. Communists are opposed to another imperialist war and strive to organize the workers to defeat the plans of the warmongers. It is the uncompromising fight against war, not the imperialist war as such, which leads to revolution. Revolution arises out of imperialist war, not because revolutionists "welcome the war", but because they fight against the war before it comes with all their power, and if this is insufficient to stop the war, they lead the masses in struggles for peace that transform the imperialist war into a civil war against the oppressing

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class. It must be pointed out that a revolutionary situation could arise independently of whether an international war was being fought or not. At the same time, any large scale imperialist war, under the present conditions of capitalist decline, will inevitably bring about a revolutionary situation.

History does not show a single example in which state power was transferred from one class to another by peaceful means, whether in the form of voting or some other method of formal democracy. We have seen that the United States was able to win its independence only after a fierce and costly war. The elimination of chattel slavery in the South and the subsequent opening up of the entire country to the unchecked development of capitalism required four years of bloody civil war. These American examples can be duplicated in every country. We have seen how, in Italy and Germany, when capitalism faced the danger of the growing revolt of the masses, fascism emerged right out of the womb of bourgeois democracy. Fascism is truly the enemy of democracy, which it devours in the most bestial fashion the world has ever seen. Wherever capitalism is confronted with a life-and-death crisis, it turns to fascist force and violence to destroy the civil liberties of the masses. It is the capitalist who utilizes unlimited violence against the toilers; it is the fascists who raise mass sadism to a ruling principle.

Communists, despite what their enemies say, do not advocate or idealize violence. A violent struggle with the capitalists is by no means our choice or preference. We know only too well the terrible price workers have to pay as the result of the violence employed by the capitalists against them every day. We would be only too delighted if the capitalists would voluntarily scrap the deadly weapons which they use against the population at home, and

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which they are piling up in unprecedented quantities for a second world war. But we would be more than fools, we would be criminals, if we did not warn the toilers that capitalists will not peacefully submit to the dictates of history. They will not allow the human race to move smoothly to a new and better society. We know that rather than turn over control to the workers they would first destroy all of civilization.

The more that capitalism disintegrates the more desperate will be its actions against the masses of the people, the more fiercely will it use unrestrained violence to keep down rising discontent, and the more frantically will it destroy those formal democratic rights that once it granted when it felt itself strong and secure. Here in the United States, the classic land of bourgeois democracy, the most authoritative spokesmen for the ruling class have openly declared that they will abolish all civil liberties and establish a fascist dictatorship, rather than allow any fundamental change in the economic system. Under the Roosevelt administration big strides in this direction were taken. The martial law and terror used against strikers throughout the strike wave of 1933-35 gave a pretty good sample of what the capitalist class has in store for the workers. Would even the most optimistic pacifist pretend that the white landlords in the South will ever peacefully grant democratic rights to the Negroes, not to speak of land? Would the mine operators, the textile mill owners, and all the capitalists who have murdered their workers in cold blood when they merely asked for union recognition, ever turn over their mines, mills and factories to the workers without a struggle?

The workers are permitted democratic rights only so long as they do not employ them against capitalism. The moment they begin to use these limited democratic rights

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to better their economic conditions, then the capitalists immediately move against these democratic rights. That is why it is so necessary for the anti-fascist movement in the present situation in the United States to fight for the democratic rights of the toilers.

But for the workers to win a real democracy for themselves they must organize the dictatorship of the proletariat against the capitalists. Just as the capitalists enjoy democracy among themselves by suppressing the toilers, so can the latter enjoy democracy only by suppressing the capitalist class. The decisive question is democracy for whom, and the dictatorship against whom. We Communists propose to reverse the present situation, to provide democracy for all the toilers and dictatorship against the bankers, monopolists and other capitalist racketeers.

If bourgeois property is to be maintained under the present conditions of capitalist crisis, then the ruling class says there must be the destruction of surplus goods and productive forces accompanied by the most brutal suppression of the suffering masses. If the productive forces and accumulated wealth of society are to be preserved and further developed, the property rights of the capitalists and the institutions by which they are maintained must be abolished, and the exploiting minority and its agents suppressed. Thus, some form of violence is unavoidable. There is no possible choice between violence and non-violence. The only choice is between the two sides of the class struggle.

If the capitalists should win the immediate fight, it will not mean a solution of the problems of the capitalist crisis. All the antagonisms which brought on the decline of capitalism will be intensified many-fold and a new and more violent crisis will develop. But if the progressive forces in society can overcome the violence of the capitalists, then

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mankind will be able to leap forward to a new and higher stage of history. The planned utilization of all productive possibilities will for the first time release humanity from the tyranny of man over man, and the subjection of mankind to the whims of nature. As Engels said, mankind will then be able to go from the kingdom of necessity to the kingdom of freedom.

**"The People's Front", by Earl Browder, Part II,
Chap. III (pp. 197-203).**

ON CHURCH, HOME and VIOLENCE*

Mr. Browder, we have heard a great deal of Communists advocating the overthrow of the United States government by force. I think it will clarify the situation greatly were you to tell us just what the stand of your Party is on that particular question.

The Communist Party does not advocate force and violence. It is a legal party and defends its legality. Communists are not conspirators, not terrorists, not anarchists. The Communist Party is an open revolutionary party, continuing under modern conditions the revolutionary traditions of 1776.

Just how do you find a basis of comparison between those conditions and the year 1936?

America was born as an independent nation out of a conflict that rose between the interests of the masses of the people on one side and the then existing government on the other side. The Declaration of Independence laid down the fundamental revolutionary principle that when such a conflict arises the people have the right and the duty to establish a new form of government to guarantee their future security. We Communists maintain the Declaration of Independence today. We do not, however, make the issue of a new form of government the question to be decided in the 1936 elections. We know that the overwhelming majority of the American people are not prepared to choose a new form of government.

*A radio interview given by Earl Browder, in Hartford, Conn., on October 6, 1936. The questioner was Cedric W. Foster, newspaperman in charge of public relations for station WHTT which carried the interview.—Ed.

"The People's Front."

Just what do you make as the issue in the election four weeks from now, and just what do you think the American people are prepared to do if they are not ready to choose a new form of government?

We say the chief issue is the choice between progress and reaction, between democracy or fascism. We believe the great majority of the American people are prepared to accept a definitely progressive platform based upon protection and extension of democratic rights. Unfortunately this majority is not yet organized for political action. It has been trying unsuccessfully to get the progressive platform adopted by one or other of the old parties. Today these people are turning toward the formation of a new party which in most places takes the form of the Farmer-Labor Party.

Well, doesn't this constitute an abandonment by the Communist Party of the revolutionary principles to which it has always adhered?

No, the Communists systematically advocate their revolutionary principles, that is, the necessity of socialism to replace the present capitalist system. But until that becomes a practical issue for the majority of the people, the Communists will join hands with all of those who fight for a better life under capitalism. The improvement of living conditions under capitalism may delay the revolutionary change to socialism but it will provide a more peaceful, less difficult and less painful transition to socialism when the time comes.

With all this talk of socialism, creeping in here, Mr. Browder, why don't you join hands with Norman Thomas

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and have one party, a combination of Socialists and Communists?

That's a good idea and we proposed that to Norman Thomas.

What was his reaction?

Norman Thomas rejected the idea of uniting the forces that want socialism. He goes farther and refuses to help build the Farmer-Labor Party to unite all of those who want to stop reaction and fascism. Norman Thomas says the issue in 1936 is the choice between socialism or capitalism. He's not interested unless he can get socialism right away. Norman Thomas has even said that it might be better if Landon, the extreme reactionary, were elected.

Well, then, please tell me briefly just what is the difference between your beliefs and those of Mr. Thomas, if there is any difference.

In the immediate issues of the day our main difference with Thomas is that we stand for a united front of all the progressives while Thomas rejects that idea. On the question of the future socialistic society our difference is chiefly that Thomas thinks that socialism can be established without a revolution.

May I interpose here, Mr. Browder. When you say revolution do you mean the generally accredited definition of that term which is war, bloodshed and suffering or do you mean an education revolution accomplished at the polls?

We have no different definition of revolution than that given to us by Thomas Jefferson.

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Jefferson pointed out that the bloody war of 1776, which was necessary to establish American independence, was not caused by advocacy of force and violence by the patriots of those days but by the determination of a government which was separated from the people to impose its will at all costs. So long as the people can control their government there will be no necessity for a bloody revolution. If the capitalists would submit to the decisions of the American people the change to socialism will be bloodless.

In other words Communistic principles do not advocate the waving of a red rag in the streets and machine guns mowing down the populace and that, Mr. Browder, I am frank to confess is just what many people believe.

It is through just such an interview as this, Mr. Foster, that we are trying to break down that belief. We Communists want to prevent a continuance of the violence that shames American life. Machine guns are not strangers to American streets, but it has never been the Communists that have brought them out. It is usually the strike-breaking agencies employed by the capitalists which have made machine guns and gas bombs commonplace experiences to large numbers of the American people. We would like to stop all that. If the employers further develop this kind of warfare upon the American working people, they are the ones who are forcing the issue.

There is another question I want to ask you, Mr. Browder. It has to do with religion. According to press reports most of the churches in Russia have been demolished under a Communistic regime. Do you believe that religion is not necessary for the welfare of mankind, and if you do not believe that how do you justify the demolition of the churches?

The Communists stand for unconditional freedom of worship. The reason why the church in Russia suffered from

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the revolution is because it was a state church bound up with the old tsarist regime of oppression which was a by-word throughout the world. It was a political instrument of the tsarist autocracy and when the Tsar was overthrown it tried to reestablish tsarism. Similarly, in Spain today, the church is suffering because it made itself the center of an organized rebellion to overthrow the democratic republic and its buildings were made into arsenals for the fascist rebels. When the church enters politics in this way the church will always suffer. If the church separates itself from the state and confines itself to its proper sphere of religion it will have nothing to complain of anywhere.

The Soviet Union divorced the church from the state and established the American system in these relations. We Communists, in general, are not adherents of any church; in this respect we follow the examples of Abraham Lincoln and Thomas Paine.

Speaking of divorcing church from state, Mr. Browder, brings up the subject to my mind of marriage and divorce. I believe it was Theodore Roosevelt who said, "When the home disintegrates the nation decays." Don't you believe that the ease with which divorce is obtained in Russia tends to lower the moral standards of the people? I don't believe you advocate such a lowering of standards?

Roosevelt was correct. One of the signs of decay in American capitalist society is the tragic break-up of millions of homes which is going on under the blows of unemployment. All of the immediate measures proposed by the Communists are aimed to protect the home. We do not think that the home can be maintained, however, by making divorce more difficult. The proper way is to create conditions under which people won't want divorces. Permanent and healthy family life is best built upon the secure posses-

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sion by all people of the material basis for the family; that is, adequate housing, plenty of food and clothing, and an assured income. It is still true very often that when poverty walks in through the door love flies out of the window. Abolish poverty and the problem of divorce will largely disappear.

Well, that seems to settle that, Mr. Browder. While we are on the subject of Russia I want to ask you another question. It has always been my belief that when any group of individuals, be they Communists or any other party adherents, come into power, they may forget they represent the common every-day man and woman and seek avariciously for more and more power. In other words, there enters the human element. Do you as a Communist claim your Party leaders immune from such lust for power that they will always remember the people whom they serve? Might they not fall into the category of the persons you term capitalists and whom you oppose?

We Communists are the last ones to deny the human element in all social problems. That is why we consider it so important that the working class shall be represented by a highly organized party which sets exemplary standards for its leadership and enforces these standards ruthlessly. Without such systematic and organized control of the leadership, through a party arising directly from the mass of the people and controlled by them, it is quite true that leadership tends to degenerate. This is especially true under conditions of capitalism which sets as the highest standard for each individual, not the service of the general good, but the accumulation of individual wealth. We do not think this is a permanent characteristic of human nature. This is only a product of the individualistic capitalist society. A deeper feature of human nature is the desire to win the

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esteem of one's fellows. When this esteem can be secured only by serving the common good, then human nature will flower as never before in history. The individual will find his greatest good in the common service.

In closing this interview, Mr. Browder, will you sum up briefly the aims of the Communist Party and what it stands for in the 1936 elections?

The Communist Party in the present election strives first of all to unite all the progressive forces in the country in a Farmer-Labor Party with a program which calls for the provision of jobs and a minimum wage for all; social security for those who cannot work through old-age pensions and unemployment insurance; guaranteed opportunity for education and work for the young people; security for the farmer in the possession of his farm and an adequate income; maintenance and extension of democratic rights and popular control of the government; a system of public finance based upon ability to pay, that is, taxation of the rich, with abolition of sales taxes; complete equality for the Negro people by the enforcement of the Constitution; and a peace policy to keep America out of war by keeping war out of the world. This platform can be summed up as a program of democracy against fascism, of progress against reaction. It can be accomplished through organizing the people in a Farmer-Labor Party. The experience in fighting for these demands, will, we believe, convince the majority of the people at some future time that it is necessary and possible to go forward to a new system of society which we call socialism. Socialism is that system whereby the people take over as their common property the basic economy of the country and operate it through their people's government for the benefit of the whole population. These, Mr. Foster, are our immediate and ultimate aims, and these are the principles for which we are struggling.

Statement of Earl Browder, General Secretary of Communist Party, U. S. A., to the McNaboe Committee, June 29, 1938.

Since the Joint Legislative Committee to Investigate the Administration and Enforcement of the Law is directed, by the Resolution establishing it, to inquire into the control of criminal tendencies, and problems of enforcement of the criminal laws of the State, I must assume that I have been called before it, as General Secretary of the Communist Party, to establish my Party's attitude to this subject, and not for a political inquiry.

The Communist Party agrees that the criminal laws are laxly enforced, and that much could be done, to the good of the public, to remedy this situation. This is particularly true of criminality in high places, as exemplified by the recent case of Mr. Richard Whitney, and some current cases brought to light by District Attorney Dewey. There can be no doubt that such criminals in high places contribute much to the creation of the general problem, both in the way of example to large numbers of unfortunate people who find themselves unable to earn a decent livelihood by honest labor, and in the way of directly corrupting the law enforcement machinery. It would be most profitable, therefore, in our opinion, if the Joint Committee would direct its investigation in the first place toward locating the cause of such startling examples of criminal tendencies in the higher circles of society. We make this suggestion to the Committee for what it may be worth.

The Communist Party has been itself accused in some quarters of fomenting disrespect of the criminal law, and of fomenting breaches of public order. These charges are, one and all, without foundation in fact, are falsehoods, designed for the ulterior purpose of discrediting the political program of the Communist Party. The Communist Party is a legal political party, operating by legal means exclu-

*Statement of General Secretary of the Communist Party
U. S. A., to the McNaboe Committee.*

sively, defending its legality under the Constitution of the United States and of the State of New York.

Some people have accused the Communist Party of hypocrisy and insincerity in its repudiation of illegal methods of conspiracy and terrorism, and add this charge to the original ones against us. The best refutation of this new charge is the fact that the Communist Party membership, most of it recruited within the past two years, has joined the Party precisely as a result of the Party's publicly proclaimed policies, and would quickly abandon the Party if they should find a contradiction between its inner convictions and beliefs and those which it publicly proclaims. Our Party membership is educated in the spirit of democracy and the American tradition, and all the Party's work is permeated throughout with this spirit. I submit to the Committee typical examples of the Party literature circulated in millions of copies.

At the 8th, 9th, and 10th National Conventions of the Communist Party, held in 1934, 1936, and 1938, more and more decisive answers were given to the slanders of our enemies. At the 10th Convention, at the end of May, these answers were summed up in provisions written into the Party Constitution, the basic law of the Party, by which every member is bound, and which supersedes all other documents or records of any kind, which document I submit to the Committee. I especially call your attention to Article VI, Section 1, which reads:

"The Communist Party of the U.S.A. upholds the democratic achievements of the American people. It opposes with all its power any clique, group, circle, faction, or party which conspires or acts to subvert, undermine, weaken or overthrow any or all institutions

*Statement of General Secretary of the Communist Party,
U. S. A., to the McNaboe Committee,*

of American democracy whereby the majority of the American people have obtained power to determine their own destiny in any degree. The Communist Party of the U.S.A., standing unqualifiedly for the right of the majority to direct the destinies of our country, will fight with all its strength against any and every effort, whether it comes from abroad or from within, to impose upon our people the arbitrary will of any unselfish minority group or party or clique or conspiracy."

Accusations have been made against the Communist Party that it seeks to stir up strikes and industrial disorders, for their own sake and not for the interests of the workers. Nothing could be further from the truth. The Communists everywhere give all their influence in favor of the establishment of the workers' rights of organization and improvement of their conditions through collective bargaining, and for the utilization of the right to strike only as a last resort, when all other means of protecting their rights have failed. Communists use all their influence to help assure the orderly conduct of such industrial disputes as may arise. Any and all charges to the contrary are false and without foundation in fact.

A familiar charge against the Communist Party is that it receives "orders from Moscow", or that it is financed by "Moscow gold", or that it is a Party of aliens. There is no truth in any of these charges. The Communist Party makes its own decisions, it has never received orders from Moscow or anywhere else, and if it did receive any such orders it would throw them in the wastebasket; the Communist Party finances itself entirely from its own resources within the country; its membership is composed 99 per cent. of its citizens of the United States, and all its mem-

*Statement of General Secretary of the Communist Party,
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bers must declare their intention of becoming citizens if they are not already citizens.

A current attack against the Communist Party is that it is attempting to gain control of labor unions, and particularly of the C. I. O. There is no truth in this charge, the Communist Party does not want control of any labor organizations, and when its members are elected to any trade union offices this is entirely upon the basis of their contribution to the life of the union itself, and not upon any interests of the Communist Party as such. The Communists opposed with all their influence the separation of the C. I. O. unions from the A. F. of L., and since the separation of the unions under two centers, have continued to support the building of both A. F. of L. and C. I. O. unions, and for bringing the two bodies together again into a united labor movement. In so far as Communists are active in the C. I. O. unions, these unions originally were in the A. F. of L., and were excluded therefrom as a body, without reference to any Communist activity therein. The cry against Communists in some few unions, as for example, the United Auto Workers, arises not from protest against Communist activity, but in large part is a stratagem to defeat the plans of the broadest progressive movement to work for the reelection of Governor Murphy of Michigan.

I have no desire to hide the fact that there are some people who call themselves Communist, who yet proclaim the opposite of all these policies of the Communist Party which I have described. These are the groups known as Trotskyites and Lovestoneites. But while these groups call themselves Communist, it should be known that they are the bitterest enemies of the Communist Party; that they lend their services to all and sundry who for any reason wish to discredit or attack the Communist Party, and

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that they are not Communists at all in any honest meaning of the term. Their one and only function is to give Communism a bad name by every means at their disposal. Their only claim to the name of Communist is that many years ago, some of them occupied posts in the Communist Party, until their true nature was discovered and they were unconditionally expelled from the Party and exposed to the public, expulsions which took place in the years of 1928 and 1929, that is, nine and ten years ago.

The Communist Party is deeply conscious of the fact that the rise of fascism in many countries, its spread and its threat against the peace and democracy of the whole world, including the United States, has increased ten-fold the duty of every citizen and organization to make clear its stand toward these dangers. The Communist Party has unconditionally aligned itself upon the side of democracy and peace, against fascism and war, and is working with constantly increasing success in cooperation with all peace-loving and democratic-minded people for the common aims of all.

EARL BROWDER.

SUPREME COURT OF THE UNITED STATES.

No. 330.—OCTOBER TERM, 1938.

Eugene Kessler, District Director of
Immigration and Naturalization,
Petitioner,
vs.
Joseph George Strecker.

On Writ of Certiorari to
the United States Circuit
Court of Appeals for the
Fifth Circuit.

[April 17, 1939.]

Mr. Justice ROBERTS delivered the opinion of the Court.

The respondent is an alien who entered the United States in 1912 and has since resided here. In 1933 he applied for naturalization to a United States District Court in Arkansas. He made certain admissions to a District Director of Naturalization as a result of which naturalization was withheld and his case was referred to the Department of Labor.

November 25, 1933, the Second Assistant Secretary of Labor issued a warrant for the respondent's apprehension, in which it was recited that he was in the United States in violation of law in that (1) he believes in, advises, advocates or teaches the overthrow, by force or violence, of the Government of the United States; (2) he is a member of, or affiliated with, an organization, association, society, or group that believes in, advises, advocates or teaches the overthrow, by force or violence, of the Government of the United States; (3) he is a member of, or affiliated with, an organization, association, society, or group that writes, circulates, distributes, prints, publishes or displays, or causes to be written, circulated, distributed, printed, published or displayed, or that has in its possession for these purposes written or printed matter advising, advocating or teaching the overthrow, by force or violence, of the Government of the United States; and (4) after his entry into the United States he has been found to have become a member of one of the classes of aliens enumerated in Section 1 of the Act of October 16, 1918, as amended by the Act of June 5, 1920, to wit: an alien who is a member of, or affiliated with, an organization, association, society

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or group that believes in, advises or teaches the overthrow, by force and violence, of the Government of the United States.

The respondent was apprehended and was given hearings before an Immigration Inspector, at which he was represented by counsel and testified in his own behalf. The Government offered in evidence transcripts of his examination by the Naturalization Bureau, of an interview with him by an Immigration Inspector, and his membership book in the Communist Party of the U. S. A., issued November 15, 1932, with stamps affixed showing payment of dues to the end of February, 1933. The rules of the party, set forth in the book, provided that a failure to pay dues for three months automatically results in the loss of membership, and it is admitted there is no evidence respondent continued to be a member after March 1, 1933.

The book contained printed matter stating the purposes and objects of the party. The Government also offered a copy of a magazine called "The Communist", dated April 1934, and read into the record excerpts from articles appearing therein. The respondent admitted that he joined the Communist Party in November 1932, asserted that his membership terminated prior to March 1, 1933, and had never been renewed, and professed ignorance of the magazine called "The Communist" and its contents. In some respects his testimony as to his beliefs and actions was contradictory of his statements on prior examinations, and testimony was elicited from him in an effort to show that his denial of present affiliation with the Communist Party might not be made in good faith; but there was no sufficient evidence to sustain that conclusion. After a review of the record by the Board of Review of the Department of Labor, a warrant of deportation was issued by the Assistant Secretary which recites an affirmative finding as to each of the counts in the warrant of arrest and orders the respondent's deportation.¹

The respondent petitioned a federal district court in Arkansas for a writ of *habeas corpus* to deliver him from the custody of the Immigration Inspector. The writ was denied. Thereafter he filed the petition in the instant case in the District Court for Louisiana. In this petition he alleged that he had not been accorded a fair hearing; that the Department of Labor had not correctly construed

¹ The delay in this case is due to the fact that respondent was born an Austrian subject but was refused reentry into that country on the ground that the place of his birth is now in Poland. Protracted negotiations on the part of the Department were required to obtain the consent of the government of Poland to his return to that country.

the immigration laws applicable to his case; that the findings were without support in the evidence; that he had been denied due process of law, and that he is not a citizen of Poland, to which the warrant directed his remission. The District Court dismissed the writ. The respondent appealed to the Circuit Court of Appeals assigning error to the District Court's action in denying each of his contentions. That court found that the hearings had been fair, but held that each of the findings recited in the warrant was without support in the evidence. The court was of opinion the evidence failed to show that the respondent is now a member of the Communist Party or that he or that party, in 1933, taught, advocated, or incited the overthrow of the Government by force and violence, and that the record was bare of evidence to countervail his denial that he had ever taught or believed in the unlawful destruction or overthrow of the Government by force. The court held that the Acts of 1918 and 1920 were passed to meet a situation caused by crises in Russia in 1918 and 1919;² that the major changes in policy and conduct of the Soviet Socialist Republics which had taken place between 1918 and 1933 rebutted the implications arising from membership in the Communist Party at the time the Acts were adopted; that mere membership in that party in 1933 is not a statutory ground for deportation. The order of the District Court was reversed and the cause was remanded for further proceedings not inconsistent with the opinion.³

The Government moved for a rehearing, pressing specially the contention that the overwhelming weight of authority is to the effect that membership in the Communist Party is sufficient to warrant deportation. The petition was entertained, the judgment was amended to provide: "Reversed, with directions to try the issues *de novo* as suggested in *Ex Parte Fierstein*, 41 Fed. (2d) p. 54"; and a rehearing was denied.⁴ Judge Sibley dissented on the ground that on the basis of the respondent's membership book which refers to the Third Communist Internationale, the court could take judicial notice of the objectives and programs of the Communist Party and the Third Internationale.

²That this view is erroneous is shown by the history of the legislation referred to *infra*, p. 6. Compare, House Report 504, 66th Cong., 2nd Sess., p. 7; Senate Report 643, 66th Cong., 2nd Sess., p. 4.

³95 F. (2d) 976.

⁴96 F. (2d) 1020.

The United States petitioned for certiorari, asserting that the single question presented is "whether the court below erred in failing to sustain an order of deportation against respondent, an alien who in 1932 became a member of the Communist Party of the United States." In its specification of errors to be urged the Government enumerated (1) the holding that an alien who became a member of the party in 1932 is not, by reason of that fact, subject to deportation; (2) the holding that the evidence before the Secretary of Labor concerning the principles of the party was insufficient to sustain the order; (3) the remand for a trial *de novo* in the District Court, and (4) the failure to affirm the judgment of the District Court. As reason for the granting of the writ the Government urged a conflict of decision on the question whether membership by an alien in the Communist Party of America subjects him to deportation. By reason of the allegation of conflict and the action of the Circuit Court of Appeals in ordering a trial *de novo* in the District Court, we granted the writ.

The Government does not attempt to support the warrant of deportation on the second and third grounds therein specified, namely, that the respondent "is a member of or affiliated with" an organization described in the Act. The only evidence of record is that his membership ceased months before the issue of the warrant for his arrest. The contention is that respondent is deportable because, after entry, he became a member of a class of aliens described in Section 1 of the Act, to wit, a member of the Communist Party, an organization membership in which is made a cause of deportation because the organization believes in, advocates, and teaches the overthrow of the Government of the United States by force and violence. This contention presents the question whether the Act renders former membership in such an organization, which has ceased, a ground of deportation. Respondent insists that the statute makes only present membership in an organization described in the Act such ground.

Section 1 of the Act of October 16, 1918, as amended in 1920,⁵ has to do with the exclusion of alien immigrants and specifies five classes, members of which may not be admitted to the United States. One of these classes—subsection (c)—includes "aliens who believe in, advise, advocate, or teach, or who are members of or

⁵ Act of Oct. 16, 1918, c. 186, 40 Stat. 1012, as amended by the Act of June 5, 1920, c. 251, 41 Stat. 1008; U. S. C. Tit. 8, § 137(a) to (e).

affiliated with any organization, association, society, or group, that believes in, advises, advocates, or teaches . . . the overthrow by force or violence of the Government of the United States. . . ."

Section 2 of the Act of 1918,⁶ which was not altered by the Act of 1920, deals with deportation. It provides that "any alien who, at any time after entering the United States, is found to have been at the time of entry, or to have become thereafter, a member of any of the classes of aliens enumerated" in Section 1, shall, upon warrant of the Secretary of Labor, be taken into custody and deported, in the manner provided by law.

Relying on the phrases italicized in the quotation, the Government insists that the section embraces an alien who, after entry, has become a member of an organization, membership in which, at the time of his entry, would have warranted his exclusion, although he has ceased to be a member at the time of his arrest. We hold that the Act does not provide for the deportation of such an alien. This conclusion rests not alone upon the language, but, as well, upon the context and the history of the legislation.

The phrase "at any time" qualifies the verb "found". Thus, if at any time the Secretary finds that at entry the alien was a member, or has thereafter become and is a member, he may be deported. The natural meaning is that, as the alien was excludable for present membership, he is deportable for present membership subsequently acquired. The Government's construction, which collocates the phrase "at any time" with the phrase "or to have become thereafter" is unnatural and strained. If Congress meant that past membership, of no matter how short duration or how far in the past, was to be a cause of present deportation the purpose could have been clearly stated. The section does not bear this import.

By the first section of the Act, as amended in 1920, aliens are to be excluded who *are* members of a described organization. The section does not require the exclusion of those who have been in the past, but are no longer, members. When the Congress came to provide for deportation, instead of again enumerating and defining the various classes of aliens who might be deported, it provided that if at any time it should be found that an alien had been admitted, and, at the time of admission, was a member of any of the proscribed classes, or had thereafter become such, he should be deported. It is not to be supposed that past membership, which does not bar admission, was intended to be a cause of deportation. And

⁶40 Stat. 1012; U. S. C. Tit. 8, § 137(2).

the fact that naturalization is denied to an alien only on the ground that he "is a member of or affiliated with any organization entertaining" disbelief in or opposition to organized government, and not for past membership or affiliation,⁷ lends added force to this view.

In the absence of a clear and definite expression, we are not at liberty to conclude that Congress intended that any alien, no matter how long a resident of this country, or however well disposed toward our Government, must be deported, if at any time in the past, no matter when, or under what circumstances, or for what time, he was a member of the described organization. In the absence of such expression we conclude that it is the *present membership*, or *present affiliation*—a fact to be determined on evidence—which bars admission, bars naturalization, and requires deportation. Since the statute deals not only with membership in an organization of the described class, but with affiliation therewith and, as well, with belief and teaching, it enables the Secretary of Labor, as trier of the facts, fully to investigate and to find the true relation, belief and activity of the alien under investigation.

The legislative history of the statute supports this conclusion. By Act of March 3, 1903,⁸ Congress directed the exclusion of "anarchists, or persons who believe in or advocate the overthrow by force or violence of the Government of the United States,"⁹ and also of any "person who disbelieves in or who is opposed to all organized government, or who is a member of or affiliated with any organization entertaining and teaching such disbelief in or opposition to all organized government."¹⁰ The only section authorizing deportation of such persons is directed to an alien found to have entered in violation of the Act, if proceeded against within three years after entry.¹¹ These provisions were reenacted without alteration in the Act of February 20, 1907.¹²

The first legislation authorizing deportation of persons who had entered lawfully is H. R. 6060, enacted by the 63rd Congress but vetoed by President Wilson January 28, 1915.¹³ This bill required deportation of "any alien who *within five years after entry* shall be

⁷ Act of June 29, 1906, c. 3592, § 7, 34 Stat. 596, 598.

⁸ 32 Stat. 1213.

⁹ Sec. 2, 32 Stat. 1214.

¹⁰ Sec. 38, 32 Stat. 1221.

¹¹ Sec. 21, 32 Stat. 1218.

¹² 34 Stat. 898, §§ 21 and 38, pp. 905, 908.

¹³ House Document No. 1527, 63rd Cong., 3rd Sess.

found advocating or teaching" the defined doctrines. It also altered existing law in respect of deportation of those who had entered illegally to provide that "*at any time within five years after entry, any alien who at the time of entry was a member of one or more of the classes excluded by law*" should be deported.

A bill, in substance the same, was introduced in the 64th Congress and enacted February 5, 1917, over Presidential veto.¹⁴ While this measure was in course of passage, the Chairman of the House Committee in charge of it moved, on behalf of the Committee, to amend section 19 by inserting the phrase "*at any time*" so that the section should provide for deportation of "*any alien who at any time after entry shall be found advocating or teaching*" forcible overthrow of the government. The Act, as adopted, was in this form. The purpose of the amendment was to make plain that no time limit was fixed for deportation of aliens found advocating the doctrine.¹⁵ The Act of 1917 was amended by that of October 16, 1918, here under consideration, which, by its title, purported to apply to "*aliens who are members of the anarchistic and similar classes*."

Section 1 enlarged one of the classes of excludable aliens by the addition of the words "*aliens who are members of or affiliated with any organization that entertains a belief in, teaches or advocates the overthrow by force or violence of the Government of the United States*."

Section 2 modified the earlier Act in respect of deportation, both in form and substance. The provision for deportation of those who, at the time of entry, were members of one of the proscribed classes was retained, but the five year period of limitation within which deportation might be had was eliminated.¹⁶ The provision for deportation of aliens of anarchistic and similar classes was expanded by including as causes of deportation all the causes of exclusion enumerated in Section 1 which were themselves much broader than those included in the 1917 Act. Thus, although there was no provision in the Act of 1917 for deportation of aliens who did not personally advocate the proscribed doctrine, but were members of an organization which did, the Act of 1918 embodied such a provision. This alteration, and the elimination of the five year time limitation, were the important changes, relevant to the

¹⁴ 39 Stat. 874.

¹⁵ See 53 Cong. Rec. Part. 5, p. 5165, 64th Cong., 1st Sess.; Sen. Rep. 352, p. 14, 64th Cong. 1st Sess. to accompany H. R. 10384.

¹⁶ House Rep. 645, 65th Cong., 2nd Sess.

question under examination, which the Act of 1918 effected in the earlier legislation. These modifications lend no support to the contention that Section 2 of the Act of 1918 was intended to make quondam membership a ground of deportation.

Nor is there anything in the formal alteration worked by the Act of 1918 which leads to a different conclusion. Section 19 of the Act of 1917 dealt in distinct clauses with the various classes of aliens who might be deported, specifying in one clause an alien "who at the time of entry was a member of the classes excluded by law" and, in another clause, an alien "who, at any time after entry, shall be found advocating or teaching" the obnoxious doctrines. Section 2 of the Act of 1918 combined the clauses dealing with the two groups in a single sentence, with a somewhat different locution. We think this consolidation was not intended to alter the substantive law as it theretofore stood.

The only decisions which support the Government's position are those in the Second Circuit.¹⁷ We cannot approve their reasoning or result. It is claimed that the administrative construction has always accorded with the Government's contention in the present case. We cannot find that there has been such a uniform construction as requires an interpretation of the Act in accordance with that view. The administrative construction seems to have been in favor of the respondent's view until after the decision in the *Yokinen* case,¹⁸ and the construction seems to have been changed in deference to the decision in that case.¹⁹

Our reading of the statute makes it unnecessary to pass upon the conflicting contentions of the parties concerning the adequacy of the evidence before the Secretary concerning the purposes and aims of the Communist Party or the propriety of the court's taking judicial notice thereof.

The Solicitor General suggests that the evidence is sufficient to sustain the warrant of deportation on the first ground therein stated, namely, that the respondent believes in and teaches the overthrow, by force and violence, of the Government of the United States. It is said that the error of the Circuit Court of Appeals in reversing the District Court is, in this aspect, so plain that we

¹⁷ *United States ex rel. Yokinen v. Commissioner of Immigration*, 57 F. (2d) 707; *United States ex rel. Mannisto v. Reimer*, 77 F. (2d) 1021.

¹⁸ House Rep. 504, p. 9, 66th Cong., 2nd Sess. Hearings Communist and Anarchistic Deportation Cases, H. R. 66th Cong., 2nd Sess. Subcommittee of Committee on Immigration and Naturalization, April 21, 24, 1920, p. 17.

¹⁹ See letter of Secretary of Labor embodied in Senate Rep. 769, 75th Cong., 1st Sess.

should notice it, although the petition does not present the question. We have the power to do this in the case of plain error,²⁰ but we exercise it only in clear cases and in exceptional circumstances.

We do not know on what grounds the District Judge's action rested since he wrote no opinion. The Circuit Court of Appeals held the evidence insufficient to support the Secretary's finding. We think that the record does not justify a reversal of the holding of the court below upon this point.

The Circuit Court of Appeals remanded the cause to the District Court for a trial *de novo*. In this we think there was error. The proceeding for deportation is administrative.²¹ If the hearing was fair, if there was evidence to support the finding of the Secretary, and if no error of law was committed, the ruling of the Department must stand and cannot be corrected in judicial proceedings.²² If, on the other hand, one of the elements mentioned is lacking, the proceeding is void and must be set aside.²³ A district court cannot upon *habeas corpus*, proceed *de novo*, for the function of investigation and finding has not been conferred upon it but upon the Secretary of Labor. Only in the event an alleged alien asserts his United States citizenship in the hearing before the Department, and supports his claim by substantial evidence, is he entitled to a trial *de novo* of that issue in the district court.²⁴ The status of the relator must be judicially determined, because jurisdiction in the executive to order deportation exists only if the person arrested is an alien; and no statutory proceeding is provided in which he can raise the question whether the executive action is in excess of the jurisdiction conferred upon the Secretary.²⁵

It follows from what has been said that, as the Secretary erred in the construction of the statute, the writ must be granted and the respondent discharged from custody.

The judgment of the Circuit Court of Appeals is accordingly modified and the cause is remanded to the District Court with instructions to proceed in conformity with this opinion.

So ordered.

²⁰ *Manler v. Eby*, 234 U. S. 32, 45.

²¹ *Pearson v. Williams*, 202 U. S. 281; *Zakonaite v. Wolf*, 226 U. S. 272.

²² *Zakonaite v. Wolf*, *supra*; *Tisi v. Tod*, 264 U. S. 131, 133.

²³ *Vajtsauer v. Commissioner*, 273 U. S. 103, 106; *Gegiow v. Uhl*, 239 U. S. 3.

²⁴ *United States v. Sing Tuck*, 194 U. S. 161, 167; *Bilokumsky v. Tod*, 263 U. S. 149, 153, 153.

²⁵ *Ng Fung Ho v. White*, 259 U. S. 276; compare *Tod v. Waldman*, 266 U. S. 113, 119.



SUPREME COURT OF THE UNITED STATES.

No. 330.—OCTOBER TERM, 1938.

Eugene Kessler, District Director of
Immigration and Naturalization,
Petitioner,
vs.
Joseph George Streeker.

On Writ of Certiorari to
the United States Circuit
Court of Appeals for the
Fifth Circuit.

[April 17, 1939.]

Mr. Justice McREYNOLDS, dissenting.

Mr. Justice BUTLER and I cannot acquiesce in the disposition of this cause or in the supporting opinion just announced. It seems worthwhile briefly to indicate our views.

More than five years have passed since the alien respondent was arrested and ordered to show why he should not be deported. The record of the following proceedings before the Labor Department and in the courts, printed on eighty-four pages, is before us. It is not very difficult to understand. Without question we have power finally to dispose of the cause upon the merits notwithstanding any omissions or defects found in the petition for certiorari. In the circumstances, we think that course should be taken. The District Court upon another view of the record can ascertain nothing not open to us.

If this alien is guiltless of the charge against him he should be liberated without more ado; if guilty, the public should be relieved of his presence now. That he is an undesirable is made manifest.

The construction of the statute adopted by the Court seems both unwarranted and unfortunate. If by the simple process of resigning or getting expelled from a proscribed organization an alien may thereby instantly purge himself after months or years of mischievous activities, hoped-for protection against such conduct

will disappear. Escape from the consequences of deliberate violations of our hospitality should not become quite so facile.¹

Seven years ago, the Court of Appeals, Second Circuit, construed the statute under consideration in *United States ex rel. Yokinen v. Commissioner of Immigration*, 57 F. (2d) 707-708. There the alien had been expelled from the Communist Party before his arrest, and for that reason he unsuccessfully claimed exemption. The following excerpts from the court's opinion, with force and directness, express our view concerning the true meaning of the enactment—

"It is true that he was not a member of the Communist Party when arrested. He had recently been expelled because of his attitude toward negroes, but that did not remove him from the reach of the statute. We have nothing to do with shaping the policy of the law towards aliens who come here and join a proscribed society. Congress has provided that 'any alien who, at any time after entering the United States, is found to have been at the time of entry, or to have become thereafter, a member of any one of the classes of aliens enumerated in this section' shall be deported. 8 USCA § 137(g). This alien concededly did become after entry a member of 'one of the classes * * * enumerated' and from that time became deportable. We are urged to ameliorate the supposed harshness of the statute by reading into it words that Congress saw fit to leave out and interpret it to apply not to aliens who became members, but only to those who become and continue to the time of their arrest to be members, of one of the enumerated classes. If the words used in the statute were equivocal or the intention of Congress for any reason uncertain, there might be room for such a construction as that for which the appellant now contends. Perhaps the sufficient answer is that had Congress intended membership at the time of arrest to be the criterion it would have said so. It has the power to determine what acts of an alien shall terminate his right to remain here. *Skeffington v. Katzeff et al.* (C. C. A.) 277 F. 129. What it did do was to make the act of becoming a member a deportable offense without regard to continuance of membership and it did that in language so plain that any attempt to read in any other meaning is no less than an attempt to circumvent the law itself.

"Since the appellant admittedly had, after entry, become a member of a proscribed organization, the undisputed evidence

¹ Strecker, born in Poland in 1888, was admitted to the United States in 1912.

He joined the Communist Party November, 1932 but paid no dues subsequent to February, 1933. He claims that under the Party rules failure to pay for four weeks causes membership to cease. Warrant for his arrest issued in November, 1933.

required the order from which this appeal was taken. All proof upon which he was held to be affiliated with the Communist Party was unnecessary, and while we do not mean to intimate that any evidence on that phase of the case was unfairly received and considered, in any event it did him no harm."

A petition for certiorari asking this Court to review the judgment of the Circuit Court of Appeals was refused October 10, 1932 (287 U. S. 607). It stressed the point that—"A fair and proper construction of the statute requires that it be confined in its operation to aliens who are members of or affiliated with a proscribed organization at the issuance of the warrant of arrest."

The unusual importance of the question was not difficult to appreciate.

In the presence of clear and positive expression of Congressional intent to the contrary we do not feel at liberty to conclude that an alien who after entry has shown his contempt for our laws by deliberately associating himself with a proscribed organization must be allowed to remain if he resigned or was debarred a day, a month or a year before his arrest. An experienced court years ago declared that would be "no less than an attempt to circumvent the law itself."

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